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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/08/2003

2

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/880,554

Applicant(s)

BATCA ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,11-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 3,4,9,10,17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "56" has been used to designate support feet, carriage guides, and apertures. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claims 9, 13 and 19 are objected to because of the following informalities:

in claim 9, lines 3-4 and 6, the recitations "said connecting cable" presumably should be changed to --said shared connecting cable-- to correspond to language used in claim 6;

in claim 13, line 1, "1" presumably should be changed to --12--;

in claim 13, line 2, the recitation --, comprising first and second force applying members-- presumably should be added, in order to provide antecedent basis for limitations recited in claim 14;

in claim 19, the recitation "said first and second force applying members" presumably should be changed to --said at least one force applying member-- to correspond to language used in claim 12; and

in claim 19, line 2, "pull handles" presumably should be changed to --a pull handle-- to correspond with changes suggested to line 1 above.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 5-8 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by *O'Hearn* (US Pat. 6,565,490 B2). *O'Hearn* discloses an exercise machine comprising a frame structure 14; a weight stack load 34 supported by the frame structure; first and second pull handles 65,72; a dual sliding pulley assembly connected to the pull handles including first and second movable pulleys 58,64 that can be adjusted to a desired position by a user independently of one another; and a shared connecting cable 52 connecting the dual sliding pulley assembly to the load so that either of the pull handles can be used to lift the load. The dual sliding pulley assembly further comprises a first and second sliding carriages 26 carrying the first and second movable pulleys; first and second floating pulleys 51,70; a first cable 46 or 48 connected at one end to the first sliding carriage and at the opposite end to the pull handle, the first cable passing around the first movable pulley and the first floating pulley; a second cable 46 or 48 connected at one end to the second sliding carriage and at the opposite end to the second pull handle, the second cable passing around the second movable pulley and

the second floating pulley; and a third cable 50 connected at opposite ends to the first and second pulleys.

The shared connecting cable 50 supports a third floating pulley 76 at one end, passes around a movable pulley 80 secured to the load, and terminates at a third force applying member 88.

5. Claims 1, 5-7, 11-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fitzpatrick* (US Pat. 4,826,157). *Fitzpatrick* discloses an exercise machine comprising a frame structure 1; a load 10 supported by the frame structure; at least one pull handle force applying member 20,21; a cable and pulley system 18,30,37,43 connecting the pull handles to the load; a bench 44 to support a user; and an adjustable brace 46 connected to the frame structure and movable between at least first and second positions, the brace functioning as a stop member to prevent the bench from sliding along column 31 during a first exercise, and functioning as a foot rest 51 for the user during a second exercise. The function of the cross-bar 51 as a foot rest is an intended use and the cross-bar is fully capable of such use. The pull handles are connected by a shared cable 18 to the load so that use of either one or both of the first and second force applying members by the user lifts the load. The cable and pulley system includes a dual sliding pulley assembly including a first and second movable pulleys 23,24 that can be adjusted to a desired position by the user independently of one another.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *O'Hearn* (US Pat. 6,565,490 B2) in view of *Fitzpatrick* (US Pat. 4,826,157). *O'Hearn* has been discussed above, and such discussion is incorporated herein. *O'Hearn* discloses the invention as claimed except for a bench to support a user and an adjustable brace connected to the frame structure and movable between at least first and second positions, the brace functioning as a stop member to prevent the bench from sliding during a first exercise, and functioning as a foot rest for the user during a second exercise (claim 12).

*Fitzpatrick* discloses an exercise machine comprising a pair of pull handles 23,24 connected to a load 10 so that the pull handle positions can be independently adjusted and that use of either handle by the user lifts the load. A bench 44 is movable mounted to a frame structure 1 of the exercise machine to support a user in a variety of positions. An adjustable brace 46 is connected to the frame structure and movable between at least first and second positions, the brace functioning as a stop member to prevent the bench from sliding during a first exercise, and functioning as a foot rest during a second exercise. The function of the cross-bar 51 as a foot rest is an intended use and the cross-bar is fully capable of such use.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide exercise machine of *O'Hearn* with the bench and adjustable brace of *Fitzpatrick*, in order to provide a support for a user to perform a variety of exercises in various positions. The provision of benches to exercise machines is notoriously old in the exercise art and is commonly provided for in the design of exercise machines used by those in wheel chairs.

***Allowable Subject Matter***

8. Claims 3, 4, 9, 10, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose a fourth cable and fourth floating pulley as claimed, and in particular the connecting cable as would be interpreted in the allowed claims. It would have been obvious to connect an end of the cable 52 to the load rather than looping it through a pulley on the load, in order to reduce the amount of cable required to be pulled by exercise bar 88, and then typically, a double floating pulley would be used to "tap" into the cable 52 to provide resistance for third floating pulley 76. To arrive at a connecting cable, as claimed, the two pulleys of a double floating pulley would need to be separated by a "connecting cable" with one of the floating pulleys being the third floating pulley and the fourth floating pulley

tapping into the cable 52. It would not have been obvious to one having ordinary skill in the art to make these substitutions since there is not teaching in the prior art.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Salyer et al.* (US Pat. 4,834,367) and *Tolles* (US Pat. 6,527,683 B2) disclose exercise machines comprising sliding carriages analogous to Applicant's invention.

*Henes* (US Pat. 5,211,614), *Simonson* (US Pat. 6,458,061 B2), *Sechrest et al.* (US Pat. 6,488,612 B2) disclose exercise machines with a pair of handle pulls independently adjustable and lifting a common load.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



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**Victor K. Hwang  
October 1, 2003**